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NO FEE – GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

KENNETH J. D'OYEN and MARJORIE E. D'OYEN, as trustees of the D'OYEN FAMILY TRUST DATED OCTOBER 9, 2002; and DOES 1 through 50, inclusive,

Defendants.

Case No.:

COMPLAINT FOR ABATEMENT AND INJUNCTION

[CIVIL CODE SECTION 3479, *ET SEQ.*; BUS. & PROF. CODE SECTION 17200, *ET SEQ.*]

[Unlimited Action]

PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, alleges as follows:

I. INTRODUCTION

1. This action ("Action") is brought and prosecuted by Plaintiff, the People of the State of California ("People"), for the purpose of abating, preventing, and enjoining a gang-related public nuisance that exists at a three-level, approximately 27-unit apartment complex located in the Hyde Park neighborhood of South Los Angeles with an address commonly known as 6811 10th Avenue, Los Angeles, California 90043 (the "Property"). The Property, which is located within 1,000 feet of three schools[1], has been the site of shootings and numerous arrests, including several for unlawful firearm possession. The Action is brought pursuant to the Public Nuisance Law ("PNL"), California Civil Code sections 3479-3480, and the Unfair Competition Law ("UCL"), California Business and Professions Code section 17200, *et seq*.

2. For at least the past eight years, the Property has been under the control of the Rollin' 60s ("R60s"), a criminal street gang. The Property has such significance to the gang that the gang members have nicknamed it the "New Jacks," a reference to "New Jack City," an iconic 90's movie, which centers on an apartment complex that a gang controls and utilizes for its narcotics sales. The Property is also prominently featured in R60s' rap videos.

3. In order to demonstrate their control over the Property and the surrounding neighborhood, which R60s claims as its territory, the gang members and associates congregate at the Property in large groups, sometimes as many as 50 to 60 at a time, on the Property's front lawn, the courtyard, the rear carport, and in the common laundry room; their presence also spills out from the Property onto the sidewalk and into the street. They are often dressed in gang attire or with their shirts off, conspicuously displaying gang tattoos, usually while smoking marijuana, drinking alcohol, playing dice, and/or listening to loud music. The gang members' physical presence at the Property, while so blatantly representing the gang with their attire and tattoos, is meant to project power to rival gangs and intimidate law-abiding

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[1] The schools within 1,000 feet of the Property include YES Academy/Hyde Park Elementary, Alliance Virgil Roberts Leadership Academy, and Alliance Renee & Meyer Luskin Academy.

community members who might consider cooperating with law enforcement against the gang. The Property also acts as a refuge when they are hanging out in front of it, as gang members and associates often run back into the Property upon encountering rival gang members or law enforcement. Not every building within a gang's turf is available for exploitation by a gang the way the Property is; other buildings are, for example, managed better, more physically fortified, or lack gang "friendlies" who attract gang members in the first place.

4. Indeed since 2011, there have been at least two documented shootings at the Property, and the Los Angeles Police Department ("LAPD") has made at least 18 arrests and recovered eight firearms at or connected to the Property. LAPD has also received community complaints over the years about the constant loitering of gang members and associates at and around the Property, some of whom have been armed, and the fear and intimidation the gang's presence causes to the surrounding community.

5. The property owners – defendants Kenneth J. D'Oyen and Marjorie E. D'Oyen, as trustees of the D'Oyen Family Trust Dated October 9, 2002 (collectively "Defendants") – have known and are currently aware of the gang-related public nuisance activity occurring at the Property but have thus far been unable or unwilling to abate the nuisance. Accordingly, this Action is necessary to make the Property safe for its law-abiding residents and the people in the surrounding area.

II. THE PARTIES AND THE PROPERTY

A. The Plaintiff

6. Plaintiff, the People, is the sovereign power of the State of California designated in California Code of Civil Procedure section 731 to be the complaining party in actions brought to abate, enjoin, and penalize narcotics nuisances and public nuisances, respectively. Furthermore, the City of Los Angeles has a population in excess of 750,000, and as such, California Business and Professions Code section 17204 authorizes Plaintiff, the People, to prosecute actions for relief under California Business and Professions Code section 17200, *et seq.* for unlawful competition.

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B. The Defendants

7. Defendants have been the record owners of the Property since at least November 4, 2002 and prior to that, owned the Property in their individual capacities since at least December 31, 1996.

8. The true names and capacities of defendants sued herein as Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiff will seek leave of Court to amend this complaint and to insert in lieu of such fictitious names the true names and capacities of said fictitiously named defendants.

C. The Property

9. The Property is specifically described as "Lots 618 and 619, Hyde Park Track, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 14 Page 21 of miscellaneous records, in the office of the County Recorder of said County. Except therefrom all oil, gas, mineral and other hydrocarbon substances located not less than 500 feet below the surface of said land, as provided in deed recorded June 29, 1969 as Instrument No. 2266," with Assessor's Parcel Number 4006-026-019.

III. THE PUBLIC NUISANCE LAW

10. "Abatement of nuisances is a long established and well recognized exercise of the state's police power." (*People ex rel. Hicks v. Sarong Gals* (1974) 42 Cal.App.3d 556, 563; *People ex rel. Bradford v. Barbiere* (1917) 33 Cal.App. 770, 775-778.) Civil Code section 3479 defines a nuisance as "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . ." (*Bakersfield v. Miller* (1966) 64 Cal.2d 93, 99 ["The Legislature has defined in general terms the word 'nuisance' in Civil Code section 3479"].)

11. Civil Code section 3480 defines a public nuisance as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

12. In particular, drug dealing, loitering, consumption of alcohol and illegal drugs, and boisterous conduct which creates a hooligan-like "atmosphere" constitutes a public nuisance. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1120.)

13. Under Civil Code section 3491, "The remedies against a public nuisance are: 1. Indictment or information; 2. A civil action; or, 3. Abatement." "An abatement of a nuisance is accomplished by a court of equity by means of an injunction proper and suitable to the facts of each case." (*Sullivan v. Royer* (1887) 72 Cal. 248, 249.)

14. Code of Civil Procedure section 731 authorizes a city attorney to bring an action to enjoin or abate a public nuisance. It provides, in pertinent part, "A civil action may be brought in the name of the people of the State of California to abate a public nuisance . . . by the city attorney of any town or city in which the nuisance exists." (*Ibid.*)

IV. UNFAIR COMPETITION LAW

15. The practices forbidden by California's Unfair Competition Law at Business and Professions Code section 17200 *et seq.* include any practices forbidden by law, be they criminal, federal, state, municipal, statutory, regulatory or court-made. As the California Supreme Court has explained, the UCL "borrows violations of other laws and treats them as unlawful practices independently actionable under section 17200 *et seq.*" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880 (internal citations and quotation marks omitted).)

16. As proscribed by the UCL, "[a]n 'unlawful business activity' includes anything that can properly be called a business practice and that at the same time is forbidden by law." (*People v. McKale* (1979) 25 Cal.3d 626, 632.) Moreover, the UCL casts a broad net. "Any person performing or proposing to perform an act of unfair competition may be enjoined . . . ." (Bus. & Prof. Code, § 17203.) The term "person" includes "natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons." (Bus. & Prof. Code, § 17201.) The courts have expanded section 17200's net beyond direct liability to include common law doctrines of secondary liability where the liability of each defendant is predicated on his or her personal participation in the unlawful practices. (*People*

v. Toomey (1985) 157 Cal.App.3d 1, 14; *Emery v. Visa Int'l Service Ass'n* (2002) 95 Cal.App.4th 952, 960.)

17. Civil actions under the UCL may be brought in the name of the People of the State of California by any city attorney of a city having a population in excess of 750,000 (Bus. & Prof. Code, § 17204), such as the City of Los Angeles. A public entity can sue pursuant to section 17200 based on violations of its own municipal code, state law, or other local ordinance. *(People v. Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.4th 330, 338-339.)

18. Defendants engaging in violations of the UCL may be enjoined in any court of competent jurisdiction. (Bus. & Profs. Code, § 17203.) A court may make such orders or judgments, including appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice constituting unfair competition. (*Id.*)

19. Although no case has specifically been called upon to define the term "business" in section 17200, courts have frequently given a broad reading to the provisions of the UCL so as to effect its broad remedial purposes. (*See, e.g., Barquis v. Merchants Collection Ass'n* (1972) 7 Cal.3d 94, 111-113.) An enterprise engaged entirely in criminal conduct such as the manufacture of illegal drugs or obscene matter is a business for purposes of section 17200. (*People v. EWAP, Inc.* (1980) 106 Cal.App.3d 315, 320-321.) Moreover, recent amendments to section 17200 make clear that even a one-time act of misconduct can constitute a violation of the UCL. (*Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965, 969.)

20. Further, the ownership and operation of a rental apartment complex is, axiomatically, a business. (*See People ex rel. City of Santa Monica v. Gabriel* (2010), 186 Cal.App.4th 882, 888 ("The renting of residential housing is a business."); *see also Barquis v. Merchants Collection Ass'n*, (1972) 7 Cal.3d 94, 111-113 (giving a broad meaning of the UCL so as to effect its broad remedial purposes).) Thus, when a property owner conducts, maintains or permits a nuisance that is unlawful under the PNL to exist on the premises of such a business, it is a violation of the UCL. (*See San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1323.)

V. FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE

[Civil Code Section 3479, *et seq.* --

Against All Defendants and DOES 1 through 50]

21. Plaintiff incorporates by reference Paragraphs 1 through 20 of this Complaint and makes them part of this First Cause of Action as though fully set forth herein.

22. Since at least 2011 through the present time, the Property has been owned, operated, occupied, used, and/or directly or indirectly permitted to be occupied and used, in such a manner as to constitute a public nuisance in violation of Civil Code sections 3479 and 3480. The public nuisance, as described herein, is injurious to health, indecent or offensive to the senses, and/or an obstruction to the free use of property, so as to substantially and unreasonably interfere with the comfortable enjoyment of life or property by those persons living in the surrounding community. The public nuisance at and around the Property consists of, but is not limited to: shootings; batteries; unlawful firearm possession; and the threatening and disorderly presence of large groups of gang members.

23. Defendants, who own and/or control the Property, and DOES 1 through 50, knew or should have known about the nuisance activity at the Property and failed to take reasonable steps to prevent or abate the ongoing nuisance, and as a result of this failure and their mismanagement of the Property, they have caused and/or contributed to a serious threat to the general health, safety, and welfare of the law-abiding tenants at the Property and persons in the surrounding community.

24. Unless Defendants, and DOES 1 through 50, are restrained and enjoined by order of this Court, they will continue to use, occupy and maintain, and to aid, abet or permit, directly or indirectly, the use, occupation, and maintenance of the Property, together with the fixtures and appurtenances located therein, for the purpose complained of herein, to the great and irreparable damage of Plaintiff and in violation of California law.

VI. SECOND CAUSE OF ACTION FOR UNFAIR COMPETITION

[Business and Professions Code Section 17200, *et seq.* -- Against All Defendants and DOES 1 through 50]

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 of this Complaint and makes them part of this Second Cause of Action, as if fully set forth herein.

26. Ownership and rental of residential housing, such as the Property, is a business. When the owner of such a business violates the PNL such that a nuisance exists and flourishes at the business' premises, as set forth herein, it is also a violation of the UCL.

27. Defendants and DOES 1-50 have violated the UCL by engaging in the following unlawful or unfair business acts and practices: conducting, maintaining and/or permitting, directly or indirectly, gang-related criminal and/or nuisance activity at the Property, as alleged herein, in violation of the PNL.

28. Plaintiff has no adequate remedy at law, and unless Defendants and DOES 1-50 are restrained by this Court they will continue to commit unlawful business practices or acts, thereby causing irreparable injury and harm to the public's welfare.

PRAYER

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT ORDER, ADJUDGE AND DECREE AS FOLLOWS:

AS TO THE FIRST CAUSE OF ACTION

1. That the Property, together with the fixtures and moveable property therein and thereon, be declared a public nuisance and be permanently abated as such in accordance with California Civil Code section 3491.

2. That each defendant and their agents, officers, employees and anyone acting on their behalf, and their heirs and assignees, be preliminarily and perpetually enjoined from operating, conducting, using, occupying, or in any way permitting the use of the Property as a public nuisance. Such orders should include, but not be limited to physical and managerial improvements to the Property, such as without limitation, a qualified professional property management company ("PMC") to manage the Property, a full-time resident manager hired by

the PMC, armed security presence for as long as the PMC requests, key fob access for pedestrians, gates that automatically close and lock, an internet-connected video monitoring system accessible by LAPD, and such other orders as are appropriate to remedy the nuisance on the Property and enhance the abatement process.

3. Such costs as may occur in abating said nuisance at the Property and such other costs as the Court shall deem just and proper.

4. That Plaintiff be granted such other and further relief as the Court deems just and proper, including closure of the Property.

AS TO THE SECOND CAUSE OF ACTION

1. That each defendant be declared in violation of Business and Professions Code section 17200.

2. That each defendant, as well as their agents, heirs, successors, and anyone acting on its behalf, be permanently enjoined from maintaining, operating, or permitting any unlawful or unfair business acts or practices in violation of Business and Professions Code section 17200.

3. That the Court grant a preliminary and/or permanent injunction prohibiting each defendant, as well as their agents, heirs, successors, and anyone acting on their behalves, from engaging in the unlawful or unfair acts and/or practices described herein at the Property and in the City of Los Angeles. Such orders should include physical and managerial improvements to the Property.

4. That, pursuant to Business and Professions Code section 17206, each defendant be assessed a civil penalty of $2,500 for each and every act of unfair competition. Since each defendant has engaged in a continuing nuisance, each day constitutes an act of unfair competition and each defendant should be assessed a civil penalty not to exceed $3.65 million.

5. That, pursuant to the Court's equitable power and Business and Professions Code section 17203, the Court make such orders or judgments, including appointment of a receiver, to eliminate the unlawful or unfair competition alleged herein.

AS TO ALL CAUSES OF ACTION

1. That Plaintiff recover the amount of the filing fees and the amount of the fee for the service of process or notices which would have been paid but for Government Code section 6103.5, designating it as such. The fees may, at the Court's discretion, include the amount of the fees for certifying and preparing transcripts.

2. That Plaintiff be granted such other and further relief as the Court deems just and proper.

DATED: August 26, 2019

Respectfully submitted,

Office of the Los Angeles City Attorney

By: /s/ Liora Forman-Echols
LIORA FORMAN-ECHOLS
Attorneys for Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA